IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3724 OF 2006.

Nemgonda Bharma Patil
(since deceased through heirs)
1A.Smt.Chandrabai Nemgonda
Patil and others. ... Petitioners.
Versus.
Kallappa Tatoba Bhilavde & anr. ... Respondents.

Shri N.J.Patil for the Petitioners.

Shri P.D.Dalvi for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 22nd June, 2007.

P.C.:

1. Heard the Advocate appearing for the Petitioners and the Advocate appearing for the Respondents. The Petitioners are the decree holders in whose favour a decree for perpetual injunction has been passed in a civil suit against the Respondents. The decree is for restraining the Respondent from causing obstruction to the Petitioners' possession and enjoyment of the suit land along with a well and trees standing thereon and the electric motor and pipeline installed thereon. According to the case of the Petitioners, the Respondents infringed the decree of perpetual injunction and therefore, an execution application was filed by the Petitioners. The said application has been rejected by the impugned order dated 28th February 2007.

2. The parties were permitted to lead evidence by the executing Court. After the evidence was adduced by the parties, a finding of fact has been recorded that

the Petitioners have not established any disobedience of the decree of perpetual injunction on the part of the Respondents.

3. The Respondents have filed separate affidavits on 19th June 2007. In the said affidavits, both of them have given an undertaking not to commit breach of the decree of perpetual injunction.

4. After having heard the learned Advocates appearing for the parties, I find that there is no error in the finding of fact recorded by the trial Court that the disobedience of the perpetual injunction was not established by the Petitioners. It is not possible to interfere with the finding of fact recorded after considering the evidence on record.

5. The undertakings contained in the affidavits dated 19th June 2007 are accepted. It is obvious that in case the Respondents commit any breach or violation of the decree of perpetual injunction, it is always open for the Petitioners to make a fresh application for execution and/or take out such other proceedings as are permissible in law. Subject to what is stated above, the writ petition is rejected.

Judge.